

IC 14-34-4

Chapter 4. Permit Approval or Denial

IC 14-34-4-1

Applicant's required notice of application

Sec. 1. At the time of submission of an application for a permit or revision or renewal of a permit under this article, the applicant shall do the following:

- (1) Place the advertisement submitted as part of the application under IC 14-34-3-3(6) in a local newspaper of general circulation in the county in which the proposed surface coal mining operation is located at least one (1) time a week for four (4) consecutive weeks.
- (2) Mail a copy of the advertisement to each person identified in the application under IC 14-34-3-3(2).
- (3) Mail a copy to every person who has requested notice of such applications.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-2

Director's required notice of application

Sec. 2. (a) The director shall give notice to the following:

- (1) Various local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies in the county in which the proposed surface coal mining operation will take place.
- (2) All federal or state governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation that are part of the permit coordinating process developed in accordance with IC 14-34-3-14.
- (3) Those agencies with an interest in the proposed operations, including the following:
 - (A) The United States Department of Agriculture Natural Resources Conservation Service district office.
 - (B) The local United States Army Corps of Engineers district engineer.
 - (C) The National Park Service.
 - (D) State and federal fish and wildlife agencies.
 - (E) The historic preservation officer.

(b) The notice required by subsection (a) must consist of the following:

- (1) The operator's intention to mine a particularly described tract of land.
- (2) The application's permit number.
- (3) Where a copy of the proposed surface coal mining and reclamation plan may be inspected.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-3

Comments concerning applications

Sec. 3. (a) The local bodies, agencies, authorities, or companies notified under section 2 of this chapter may, within thirty (30) days of notification, submit written comments concerning the permit applications with respect to the effect of the proposed surface coal mining operation on the environment in their area of responsibility.

(b) The director shall immediately do the following:

(1) Transmit the comments to the applicant.

(2) Make the comments available to the public at the same locations that the permit applications are available.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-4**Objections; request for informal conference or public hearing**

Sec. 4. (a) A person with an interest that is or may be adversely affected by a proposed surface coal mining operation or the officer or head of a federal, state, or local governmental agency or authority may:

(1) file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the director; and

(2) request an informal conference or a public hearing under section 6 of this chapter;

within thirty (30) days after the last publication of the notice required by sections 1 and 2 of this chapter.

(b) The request for an informal conference or public hearing must do the following:

(1) State specifically the objections of the person requesting the conference.

(2) If the person requesting the conference or public hearing is not the officer or head of a federal, state, or local governmental agency or authority, identify the interest of the person who is or may be affected by the proposed surface coal mining operation.

(c) Upon receipt of an objection under subsection (a), the director shall immediately do the following:

(1) Transmit the objections to the applicant.

(2) Make the objections available to the public.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-5**Informal conference or public hearing; access to mining area; record of proceedings**

Sec. 5. (a) If written objections are filed and an informal conference or a public hearing is requested, the director shall hold the conference or public hearing in the locality of the proposed surface coal mining operation within a reasonable time of receipt of the objections or request. The director shall advertise in a newspaper of general circulation in the county in which the proposed surface coal mining operation is located at least two (2) weeks before the scheduled conference or public hearing the date, time, and location

of the conference or public hearing.

(b) The director may arrange with the applicant, upon request by any party to the administrative proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(c) An electronic or a stenographic record shall be made of the conference or public hearing, unless waived by all parties. The director shall maintain the record and have the record accessible to the parties until final release of the applicant's performance bond.

(d) The director may not hold the conference or public hearing if any of the following conditions exist:

(1) All parties requesting the conference or public hearing stipulate agreement before the conference or public hearing and withdraw their request.

(2) The request fails to comply with the requirements of section 4 of this chapter.

(3) The objections do not concern a matter within the scope of this article or the commission's rules.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-6

Conditions requiring public hearing

Sec. 6. A public hearing shall be held on the proposed initial or revised application for a permit if any of the following conditions exist:

(1) The applicant requests a public hearing under section 4 of this chapter.

(2) A petition is filed with the director requesting a public hearing that is signed by at least twenty-five (25) individuals who are at least eighteen (18) years of age and who:

(A) reside in the county where the permitted activity would take place; or

(B) own real property within one (1) mile of the site of the proposed or existing permitted activity.

(3) The director orders a public hearing.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-7

Approval of application; requirements

Sec. 7. (a) The applicant has the burden of establishing that the application complies with all the requirements of this article. The director may not approve a permit or revision application unless the application affirmatively demonstrates and the director finds the following:

(1) The permit application is accurate and complete and in compliance with all the requirements of this article.

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application.

(3) The:

- (A) assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in IC 14-34-3-3 has been made by the director; and
- (B) proposed mining operation is designed to prevent material damage to the hydrologic balance outside the permit area.

(4) The proposed mining area is not:

- (A) included within an area designated unsuitable for surface coal mining under IC 14-34-18-4; or
- (B) within an area under study for that designation in an administrative proceeding;

unless the applicant demonstrates that before January 1, 1977, the applicant has made substantial legal and financial commitments in the operation for which the applicant is applying for a permit and is in an area where an administrative proceeding has commenced under IC 14-34-18-4.

(5) If the private mineral estate is severed from the private surface estate, the applicant has submitted to the director one

(1) of the following:

- (A) The written consent of the surface owner to the extraction of coal by surface mining methods.
- (B) A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with Indiana law.

(6) A surface coal mining operation owned or controlled by the applicant or a person who owns or controls the applicant is not in violation of:

- (A) this article;
- (B) IC 14-36-1;
- (C) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328);
- (D) any federal statute or regulation; or
- (E) any state statute or rule enacted or adopted under federal statute or regulation pertaining to air or water environmental protection;

unless the applicant submits proof that an existing violation has been appealed or corrected or is in the process of being corrected to the satisfaction of the regulatory authority that has jurisdiction over the violation.

(7) The applicant has, if applicable, satisfied the requirements for approval of a long term, intensive agricultural postmining land use.

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR Part 870.

(9) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined

under the federal Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(10) If any part of the operation would take place in a floodway, the operation will not:

(A) result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources;

(B) adversely affect the efficiency; or

(C) unduly restrict the capacity;

of the floodway.

(b) The director shall make the findings required by subsection (a) in writing and available to the applicant. The director may base the findings on information set forth in the application or from information otherwise available. The director shall set forth in the written approval or denial the basis of the director's findings.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-8

Nonissuance of permit for violations of certain federal and state statutes

Sec. 8. (a) As used in this section, "applicant" or "operator" includes the following:

(1) The officers, partners, or directors of the applicant or operator.

(2) The officers, partners, or directors of applicants or operators under IC 14-36-1.

(b) The director may not issue a permit to an applicant if the director finds after a hearing conducted in accordance with IC 4-21.5-3 that the applicant or the operator specified in the application controls or has controlled surface coal mining operations with a demonstrated pattern of willful violations of:

(1) the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328);

(2) this article or IC 13-4.1 (before its repeal);

(3) IC 14-36-1 or IC 13-4-6 (before its repeal); or

(4) any state statute enacted in response to P.L.95-87, the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328);

of a nature and duration and with the resulting irreparable damage to the environment that indicates an intent not to comply with this article, IC 13-4.1 (before its repeal), IC 14-36-1, or IC 13-4-6 (before its repeal).

As added by P.L.1-1995, SEC.27.

IC 14-34-4-8.5

Exemptions for unanticipated events or conditions

Sec. 8.5. The:

(1) finding required by section 7(a)(6) of this chapter; and

(2) prohibition on the issuance of a permit in section 8 of this chapter;

do not apply to a violation resulting from an unanticipated event or

condition at a surface coal mining operation on lands eligible for remining under a permit held by the applicant.

As added by P.L.179-1995, SEC.4.

IC 14-34-4-9

Mining of prime farmland

Sec. 9. (a) This section does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits since that date.

(b) In addition to finding the application in compliance with section 7 of this chapter, if the proposed mining area contains prime farmland under IC 14-34-3-3(16), the director shall, after consultation with the United States Secretary of Agriculture and under rules adopted by the commission, grant a permit to mine on prime farmland if the director finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in IC 14-34-10-2(b)(10).

As added by P.L.1-1995, SEC.27.

IC 14-34-4-10

Considerations regarding historic sites and structures

Sec. 10. (a) The director may not approve a permit application unless, in addition to the findings required by section 7 of this chapter, the director states in writing that the director has considered the effects of the proposed mining operation on a place listed on or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures.

(b) If the director considers it appropriate in accordance with rules adopted by the commission under this section, the director may impose conditions on a permit for the protection of properties or sites listed on or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures requiring that:

- (1) mining operations not occur in the areas occupied by the properties or sites; or
- (2) measures be implemented to mitigate the effects of the operation upon those properties or sites before mining.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section consistent with the following general principles:

- (1) The commission's rules may not prohibit the use of information from any source and shall recognize the responsibilities of the state historic preservation officer under IC 14-21-1-12 and IC 14-21-1-15.
- (2) The commission's rules must provide for participation by professional and amateur archeologists, anthropologists, historians, or related experts in any:

- (A) field investigations;
 - (B) studies; or
 - (C) records searches;
- required by the director under this section.

(3) The commission's rules must strive to ensure that field investigations and studies are required only where a substantial likelihood exists that important and significant archeological or historic sites are present.

(4) In considering the effect of proposed surface coal mining and reclamation operations on a property or site eligible for listing on the National Register of Historic Places, the director shall consider the following:

(A) Based on information available from the division of historic preservation and archeology, the relative importance of the property or site compared to other properties or sites in Indiana listed on or eligible for listing on the National Register of Historic Places.

(B) The cost of an investigation of the permit area or site as estimated by the applicant. A decision that an investigation is not required may not be based on cost alone.

(5) This section does not authorize rules that impair the ownership of artifacts or other material found on private land.

(d) The director may do the following:

(1) Investigate the possibility of obtaining available federal or private:

- (A) grants;
- (B) subsidies; or
- (C) aid;

to defer the cost to private individuals of measures required by the director under this section.

(2) Apply for any:

- (A) grants;
- (B) aid; or
- (C) subsidies;

that the director determines are available.

(e) In making the finding required by this section, the director shall take into account the general principles set forth in subsection (c).

As added by P.L.1-1995, SEC.27.

IC 14-34-4-10.5

Good faith effort to identify problems that may result in unanticipated events or conditions

Sec. 10.5. (a) A person who submits an application for a permit or for the revision or renewal of a permit under this article shall, to the extent not otherwise addressed in the permit application, make a good faith effort to identify potential problems that may result in an unanticipated event or condition.

(b) An event or condition that arises despite substantial adherence to the applicable operation and reclamation plan may be considered

unanticipated if it was not identified in the application for the governing permit.

As added by P.L.179-1995, SEC.5.

IC 14-34-4-11

Written findings

Sec. 11. (a) If an informal conference or public hearing is held under section 5 of this chapter, the director shall furnish the applicant and all parties with written findings:

- (1) granting or denying the permit in whole or in part; and
- (2) stating the reasons for granting or denying the permit in whole or in part;

within sixty (60) days of the conference or public hearing.

(b) If the director does not take action on the permit application within sixty (60) days after the conference or public hearing, the applicant may do the following:

- (1) Consider the permit application disapproved.
- (2) Request a hearing under section 13 of this chapter.
- (c) The applicant may waive the time limits of this section.

(d) If an informal conference or public hearing is not held under section 5 of this chapter, the director shall notify the applicant in writing within a reasonable time established by the commission by rule and taking into account:

- (1) the time needed for proper investigation of the site;
- (2) the complexity of the permit application; and
- (3) whether or not written objections to the application were filed;

whether the application has been approved or disapproved in whole or in part.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-12

Notification of applicant of director's decision

Sec. 12. The director shall notify an applicant of the director's decision regarding the application. If the application is disapproved, the notification must set forth specific reasons for the application's disapproval.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-13

Hearing on reasons for final determination

Sec. 13. (a) Within thirty (30) days after an applicant is notified of the approval or disapproval of an application:

- (1) the applicant; or
- (2) any person with an interest that is or may be adversely affected;

may request a hearing on the reasons for the final determination. The request must identify the person's interest that is or may be affected by the approval or disapproval of the application.

(b) Upon receipt of a request for a hearing under subsection (a),

the commission shall do the following:

- (1) Hold a hearing within thirty (30) days of the receipt of the request.
- (2) Notify the applicant and all interested parties of the time and place of the hearing.
- (3) Conduct the hearing and proceedings in accordance with IC 4-21.5. For all hearings and proceedings commenced after July 1, 1991, the commission is limited to the record before the director.

(c) Within thirty (30) days after the hearing, the commission shall furnish:

- (1) the applicant; and
- (2) all persons who participated in the hearing;

a written decision and state the reasons for the decision.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-14

Issuance of permit

Sec. 14. The director shall issue a permit if all of the following apply:

- (1) The application is approved.
- (2) The bonding requirements of IC 14-34-6 are met.
- (3) The thirty (30) day period specified under section 13(a) of this chapter has expired.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-15

Permit effective upon issuance

Sec. 15. Notwithstanding IC 4-21.5-3-5, a permit issued under section 14 of this chapter is effective upon issuance, unless a stay of the permit has been granted under section 17 of this chapter.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-16

Notification of permit issuance

Sec. 16. (a) Within ten (10) days after a permit is issued, the director shall notify the following persons that a permit has been issued:

- (1) The local government officials in the county in which the area of land to be affected is located.
- (2) Each person identified in the permit application under IC 14-34-3-3(2).
- (3) Each person who has requested a hearing under section 6 of this chapter.
- (4) Each person who has requested such notice.

(b) The notification must include a description of the land's location.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-17

Temporary relief pending final determination

Sec. 17. If a hearing is requested under section 13 of this chapter, the commission may, under the conditions that the commission prescribes, grant appropriate temporary relief pending final determination of the proceedings if the following conditions are met:

- (1) All parties to the proceedings are notified and given an opportunity to be heard on a request for temporary relief.
- (2) The person requesting temporary relief shows a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding.
- (3) Temporary relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

As added by P.L.1-1995, SEC.27.

IC 14-34-4-18**Conditions of permit**

Sec. 18. (a) Each permit issued by the director is subject to conditions imposed by the director. The conditions must include at a minimum a requirement for the operator to pay to the federal Office of Surface Mining all fees owed under 30 CFR Part 870.

(b) The director may issue a permit subject to the condition that the permittee obtain or maintain in force other licenses or permits required for the surface coal mining and reclamation operation. However, the imposition of a condition under this subsection does not authorize or require the director to administer or enforce the requirements of any federal law or of any state law other than this article.

As added by P.L.1-1995, SEC.27. Amended by P.L.75-1998, SEC.5.